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SERVICE DATE - MARCH 13, 2001

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-471 (sub-No. 3X)

SOUTH KANSAS AND OKLAHOMA RAILROAD COMPANY--
ABANDONMENT EXEMPTION--IN CHEROKEE AND ALLEN COUNTIES, KS

Decided: March 8, 2001

South Kansas and Oklahoma Railroad Company (SKO) has filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon: (1) an 8-mile line of railroad between milepost 109.0 at Iola and milepost 117.0 at Humboldt, in Allen County, KS; and (2) a 5-mile line of railroad between milepost 382.0 at Sherwin and milepost 387.0 at Faulkner, in Cherokee County, KS. Notice of the exemption was served and published in the Federal Register on December 4, 2000 (65 FR 75817). The exemption became effective on January 3, 2001.¹

On January 10, 2001, American Trails Association, Inc. (ATA) late-filed a request for issuance of a notice of interim trail use (NITU), under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), in order to negotiate with SKO for use of the line as a trail.² ATA submitted a statement indicating its willingness to assume full financial responsibility for the management of, for any legal liability arising out of the transfer or use of, and for payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation for rail service. By reply filed March 6, 2001, SKO indicated that the abandonment has not been consummated and that it is willing to negotiate with ATA for interim trail use and rail banking for the entire line.

¹ By decision served January 2, 2001, the proceeding was reopened at the request of the Board's Section of Environmental Analysis and the exemption was made subject to the condition that SKO shall not conduct salvage activities or dispose of the line until the completion of the section 7 process of the Endangered Species Act, 16 U.S.C. 1531.

² The December 4 notice provided that trail use/rail banking requests had to be filed no later than December 14, 2000. However, in Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997), the Board retained the policy of accepting filings after the due date when good cause is shown. Because there is no indication that ATA's late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Railway Company--Abandonment Exemption--In Starke County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

ATA's request complies with the requirements of 49 CFR 1152.29 and SKO is willing to negotiate. Therefore, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, SKO may fully abandon the line, provided that the environmental condition imposed in the decision served January 2, 2001, is met. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. See 49 CFR 1152.29(d)(2).

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice of exemption published in the Federal Register on December 4, 2000, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below, for a period of 180 days from the service date of this decision and notice (until September 9, 2001), subject to the environmental condition imposed in the January 2, 2001 decision.
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
6. If an agreement for interim trail use/rail banking is reached by September 9, 2001, interim trail use may be implemented. If no agreement is reached by that time, SKO may fully abandon the line.

7. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary